

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

KENNY F. EDMONSON,

PLAINTIFF

VERSUS

CIVIL ACTION NO. 3:07-cv-158-TSL-JCS

OLA HOWARD, et al.

DEFENDANTS

ORDER OF DISMISSAL

This cause is before the Court *sua sponte*. In an Order entered July 7, 2008, the Court revoked the Plaintiff's *in forma pauperis* status and ordered him to pay the required filing fee within twenty (20) days. (Document number 30.) Since that time, the Plaintiff made no attempt to pay the fee, yet he continued to prosecute the case by filing an interlocutory appeal before the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit dismissed the appeal on January 13, 2009, because Plaintiff failed to pay the docketing fee in a timely manner, and the Judgment of Dismissal was subsequently entered in this Court on January 20, 2009. (Document number 38.) On February 4, 2009, the Magistrate Judge assigned to this case entered an Order advising the Plaintiff that he should pay the \$350.00 filing fee or face dismissal of the case. (Document number 39.) The Order was sent to the most recent address the Plaintiff had given the Court, 613 Court Street, Waynesboro, MS 39367. The Order of February 4, 2009, was returned to the Court on February 12, 2009, marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." (Document number 40.)

It is well-settled that the district court can dismiss a case *sua sponte* for failure to prosecute. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir.1988) (per curiam); *see also Anthony v. Marion County Gen. Hosp.*, 617 F.2d 1164, 1167 (5th Cir.1980) ("Not only may a

district court dismiss for want of prosecution upon motion of a defendant, but it may also *sua sponte* dismiss an action whenever necessary to achieve the orderly and expeditious disposition of cases.”) (internal quotation omitted). Because the Plaintiff has failed to pay the filing fee for this civil action, and because he has failed to keep the Court informed of his current address, this case will be dismissed. *See* Fed. R. Civ. P. 41.

IT IS THEREFORE ORDERED AND ADJUDGED that this case is dismissed without prejudice for Plaintiff’s failure to pay the filing fee and his failure to keep the Court informed of his current address.

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of Court is directed to re-open this civil action if the full filing fee of \$350.00 is paid within thirty days from the entry of this Order.

IT IS FURTHER ORDERED AND ADJUDGED that all pending motions are terminated.

A final judgment in accordance with this Order of dismissal will be entered.

SO ORDERED this the 18th day of February, 2009.

/s/Tom S. Lee

UNITED STATES DISTRICT JUDGE